In the High Court of Judicature at Madras

Dated: 08/10/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Writ Petition No.9971 of 1998

T.S.Chandrasekaran .. Petitioner

-Vs-

1. The Commissioner
Madurai Corporation
Madurai

2. Mr.Chellappa
Door No.2, Mela Ponnagaram
second street
Corporation New Colony
Madurai.1. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus as stated therein.

For petitioner : Ms.K.Suguna

For respondents : Mr.P.Srinivas for R1
For R2 .. N.A.

:O R D E R

This writ petition has been filed by the petitioner praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent dated 24.06.1998 issued in No. Ma.Nee.2/4924/98 and quash the same and to direct the first respondent to promote the petitioner as Assistant Executive Engineer with effects from 24.06.1998 with all consequential benefits.

2. Challenging the promotion given to the second respondent herein to the post of Assistant Executive Engineer, the petitioner has filed the above writ petition submitting that in the year 1965 the petitioner started his career as Overseer in the Madurai Municipality; that in the year 1968, he was promoted as Supervisor and the said Post was redesignated as Junior Engineer after the upgradation of Madurai Municipality as Madurai Corporation in the year 1971, that at that point of time those who were

qualified with degree were designated as Assistant Engineers and those

who were qualified with Diploma were designated as Junior Engineer but the nature of work was one and the same; that as per the service rules framed in G.O.Ms.No.237 Municipal Administration and Water Supply (Election) Department dated 26th September, 1996, the post of Assistant Engineer comes under category I of Grade II of the Tamil Nadu Municipal Corporation Engineer & Water Supply Service Rules 1996; that as per Clause III of the said Rules, the vacancies in the post of Assistant Executive Engineer can be filled by promotion from the holder of the post of Assistant Engineer and Junior Engineer; that as per Clause V for filling the vacancies in the post of Assistant Executive Engineer, the Assistant Engineer and the Junior Engineer shall be considered as single category as per which the petitioner who joined in the post of Junior Engineer earlier than the second respondent, should have been promoted as Assistant Executive Engineer, but without considering the

petitioner's name, the second respondent has been promoted as Assistant Executive Engineer which is prima facie illegal and hence, the petitioner has come forward with the above writ petition with a prayer stated above.

3. The first respondent has filed a counter-affidavit denying the contentions raised by the petitioner in the affidavit filed in support of the writ petition; he would further submit that following the guidelines specified in G.O.Ms.No.237, Municipal Administration and Water Supply Department dated 26.09.1996, the promotions with regard to the posts of Assistant Engineer and Assistant Executive Engineer have been given to the individuals; that as per the said G.O., the ratio of appointment of Assistant Engineer by direct recruitment and by promotion from the post of Technical Assistant to the Junior Engineer would be 3:1; that adhering to the orders contained in the above said Government Order, the promotions have been given in proper manner and there are no illegalities in the said promotion and hence, prays for the dismissal of the writ petition.

4. Heard learned counsel appearing for both.

5. During arguments, learned counsel appearing on behalf of the petitioner would submit that the promotion given in the impugned order is contrary to statutory Rules; that the vacancies in the post of Assistant Executive Engineer has to be filled up as a single category. Further, learned counsel appearing for the petitioner would show the circular with regard to seniority list wherein, the petitioner is put in as No.3 and the second respondent herein is put in as No.6; that if the order has been passed following the ratio 3:1, the petitioner ought to have been promoted as Assistant Executive Engineer who is in the third place in the seniority list; Though the petitioner is senior to second respondent, his claim has been overruled and his junior alone was promoted. While considering for promotion for the post of Assistant Executive Engineer, it should be treated as single category. If the single category is followed, the petitioner ought to have been placed as senior.

6. On the contrary, learned Additional Government Pleader

would submit that after considering the objection made by the petitioner herein, the petitioner was placed in next for promotion but the petitioner retired from service on 31.01.2001 before the vacancy arose.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the learned counsel for the Corporation as well, with no representation made on the part of the second respondent, what comes to be seen is that the petitioner has come forward to file the above writ petition praying to quash the order of the first respondent dated 24.06.1998 issued in No.Ma.Nee.2/4924/98 and to direct the first respondent to promote the petitioner as Assistant Executive Engineer with effects from the date of order with all consequential benefits.

8. The strong case put up on the part of the petitioner is that he joined the services in the year 1965 as Overseer and was promoted as Supervisor in 1968 which post was re-designated as Junior Engineer after the upgradation of Madurai Municipality as corporation in 1971, that at that time, who were qualified with a degree were designated as Assistant Engineers and those qualified with Diploma were designated as Junior Engineers; that as per the service rules framed in G.O. Ms.No.237, Municipal Administration and Water Supply (Election) Department dated 26.09.1996, the post of Assistant Executive Engineer can be filled by promotion from the holder of the post of Assistant Engineer and Junior Engineer; that as per Clause V for filling the vacancies, both should be considered as single category as per which, the petitioner who joined the post of Junior Engineer earlier than the second respondent should have been promoted as Assistant Executive Engineer but the second respondent has been promoted to the said post which is prima facie illegal and hence the writ petition.

9. According to the first respondent as per the G.O., the ratio of appointment of Assistant Engineer by direct recruitment and by promotion from the posts of Technical Assistant and Junior Engineer should be 3:1; that adhering to the orders contained in the above said Government Order, the promotions have been given in proper manner and there were no illegalities in the said promotions and hence would pray for the dismissal of the writ petition.

10. In the above circumstances, since clause 3 and 5 of the Tamil Nadu Municipal Corporation Engineers and Water Supply service Rules, 1966 are relevant for consideration particularly that of clause V according to which the promotion has to be effected to the post of Assistant Executive Engineer, and therefore, it is necessary to extract Clause V of the said Rules.

"Ratio between direct recruitment of Assistant Engineers and appointment of Junior Engineers by promotion for the purpose of filling up of the vacancies in the post of Assistant Executive Engineers, the post of Assistant Engineers and Junior Engineers shall be considered as a single category. The ratio of appointment of Assistant Engineer by direct recruitment and by promotion from

the post of Technical Assistant to the post of Junior Engineer shall be 3:1"

11. Clinging to the first part of this clause to the effect that between the direct recruitment of Assistant Engineers and appointment of Junior Engineers by promotion, for the purpose of filling up the post of Assistant Executive Engineers, the post of Assistant Engineers and Junior Engineers shall be considered as a single category, the petitioner has come forward to claim that as per this part of clause V since the petitioner joined the post of Junior Engineer earlier than the second respondent, he should have been promoted as Assistant Executive Engineer prior to the second respondent and therefore, the petitioner would come forward to quash the promotion order which is impugned herein.

12. On the contrary, it would be very strongly argued on the part of the first respondent Corporation in a crisp manner that as per the above clause V of the Rules, the ratio of appointment of Assistant Engineer by direct recruitment and by promotion from the post of Technical Assistants to the Junior Engineer would be 3:1, adhering to which the promotions have been given effect to and the same is proper and quite legal.

13. No mention need be necessary that on a bare reading of the above clause extracted, it could be understood that though the posts of Assistant Engineers and Junior Engineers as in the manner aforementioned shall be considered as a single category, still in the second part of the said clause the ratio of appointment of Assistant Engineer by direct recruitment and by promotion from the post of Technical Assistant to the post of Junior Engineer shall be 3:1 and the second respondent since being Assistant Engineer by direct recruitment, according to the ratio, if three of them are promoted, from the category of the petitioner that is from Technical Assistant to the post of Junior Engineer for being promoted, the only one would get the opportunity and therefore, in accordance with the preference of the second respondent category, he has been placed before the petitioner and there is no wonder in such placements occurring in the matter of promotion to the posts of Assistant Executive Engineer and therefore the petitioner cannot claim priority over the second respondent in the placements since when three of the second respondent's category would be getting the chance for promotion only one of the category of the petitioner gets the opportunity and therefore the above fixation of the ratio since being reasonable particularly when the petitioner is not challenging the said ratio, is dis-entitled to challenge the priority given to the second respondent in accordance with the ratio and hence the following Order.

In result,

(i) the above writ petition does not merit acceptance but becomes only liable to be dismissed and is dismissed accordingly;

(ii) the order of the first respondent dated 24.06.1998 issued in No.Ma.Nee.2/4924/98 is confirmed.

No costs.

Index : Yes
Internet : Yes
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To
The Commissioner
Madurai Corporation
Madurai